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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

RICHARD OROSCO,

Plaintiff and Respondent,

v.

COUNTY OF LOS ANGELES et
al.,

Defendants and Appellants.

B247368

(Los Angeles County
Super. Ct. No. BS134508)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Luis Lavin, Judge. Affirmed.

Hausman & Sosa, Jeffrey M. Hausman and Larry D.
Stratton for Defendants and Appellants.

Green & Shinee, Deborah Wadleigh and Amy Johnson for
Plaintiff and Respondent.

Respondent, Richard Orosco, a former deputy sheriff, filed a petition for writ of administrative mandate (Code Civ. Proc., § 1094.5) seeking to overturn the ruling by Los Angeles County Civil Service Commission (commission) sustaining his termination by appellant Los Angeles County Sheriff's Department (department). The superior court entered a judgment granting the petition, and the department appealed. Finding no reversible error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Orosco was employed as a Los Angeles County deputy sheriff from 2001 to 2008. In September 2007, officers from the Long Beach Police Department responded to a domestic violence call at the home where he lived with his girlfriend, Veronica Hernandez, and their infant son. The officers determined that Hernandez was the aggressor and arrested her. The police report contained her statement that Orosco was taking illegal steroids to enhance his physique. Orosco reported the incident to his supervisor.

Several weeks later, the department imposed a 15-day suspension for a previous incident in December 2006. During that incident, Orosco had tried to work a third shift at the end of two consecutive shifts. When told that he could not work three consecutive shifts, Orosco behaved in a threatening and hostile manner toward the supervisor.

Upon returning to duty after the suspension, Orosco was ordered by Lieutenant Daniel Cruz to take a "for-cause" urine test because the department had a "reasonable suspicion" he was using steroids. The department sent the urine sample to Quest Diagnostics for a steroid panel.

There are two types of steroids: exogenous steroids which are not naturally produced by the body, and endogenous steroids which are naturally produced by the body. Boldenone, Nandrolone, and Drostanolone are exogenous steroids. In order to test for these steroids, the laboratory looks for metabolites in the urine. As a steroid is eliminated from the body, certain metabolites are excreted in the urine, and the presence of these metabolites in the urine is consistent with steroid use. In this case, the laboratory test results showed there were no “masking agents” in the urine, which indicated Orosco was not trying to hide the use of steroids with masking agents. Orosco’s urine tested positive for three metabolites: “Boldenone Metabolite,” “Nandrolone Metabolite,” and “Drostanolone and/or Metabolite.”¹ As we will explain, the presence of metabolites is consistent with but not necessarily determinative of steroid use, because over-the-counter dietary supplements can produce the same metabolites.

Based on Orosco’s positive urine test for these metabolites, the department conducted an internal affairs investigation for steroid use. In a December 2007 taped interview, Orosco denied using steroids, but acknowledged using over-the-counter dietary supplements, which he claimed explained the presence of metabolites in his urine. He provided the department with a list

¹The urine test also indicated an elevated T/E ratio, which refers to Testosterone or a Testosterone precursor. Dr. R. H. Barry Sample testified that “an elevation of the T/E ratio does not in and of itself tell us what the administered substance was. It just means that the T/E ratio is elevated above normal, and that either testosterone, a testosterone precursor, or some other manipulation of that individual’s normal endocrine system has occurred, thereby causing the elevation in the T/E ratio.”

of some of the supplements that he used: “AH-89; VNS-9; Tren Extreme; BRN2 Extreme; TT40 Extreme; HGMG Extreme; Methyl 1D; 5D Stack; Equidren; Decanor 50; Test Suspension; Uthapron; Nitrate; N-O Xplod; Nitrex; Lipodrene; and Isopure Protein.”

The department discounted Orosco’s explanation, and, in January 2008, issued a letter of intent to discharge. The letter contained the following allegations:

(1) He had a positive urine test for three anabolic steroids classified as controlled substances under Health & Safety Code section 11056, subdivision (f): “Boldenone [specifically designed to use on horses and can only be obtained by order of a veterinarian]; and/or Drostanolone and/or Nandrolone.”

(2) He used anabolic steroids on or about October 26, 2007 (the date of the urine test).

(3) He made false and/or misleading statements during the internal affairs investigation, including but not limited to:

- Denying use of anabolic steroids.
- Denying his statement on October 26, 2007, to Sergeants Trent Denison and John Harris, and Lieutenants David Witham and Daniel Cruz that he “used steroids back in the day.”
- Stating that he did not take steroids “so I can’t tell you.”
- Stating that he only takes dietary supplements.
- Denying the use of Boldenone.
- Denying any use or knowledge of Drostanolone.
- Denying any use or knowledge of Nandrolone.
- When told that Boldenone is only available through veterinarians, stating that he never used it, and does

not live on a farm or ranch, ride horses, or go to a veterinarian.

Department Chief Dennis Burns conducted a *Skelly*² hearing at which Orosco's counsel argued that dietary supplements were responsible for the positive urine test for metabolites. Counsel requested that Burns conduct an investigation of the causal relationship between supplements and metabolites in the urine. Burns invited Orosco to provide additional information regarding this affirmative defense, but none was provided.

The department issued a second letter of intent to discharge in February 2008, setting out Orosco's prior disciplinary record of 51 suspension days over four years of employment. (Orosco had a 5-day suspension in 2003, a 30-day suspension in October 2004, a 15-day suspension in October 2007, and a 1-day suspension in February 2008.) The letter stated that his recent misconduct—using steroids, being under the influence of steroids, and lying to investigators—rendered him unsuitable for further employment as he was “beyond remediation.”

The department issued a letter of termination on March 13, 2008. Orosco requested an administrative hearing. The commission appointed a hearing officer, Richard C. Anthony, to conduct an administrative hearing on two issues: whether the allegations in the letter of termination were true, and if so, whether the discipline imposed by the department was appropriate.

² *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194.

At the administrative hearing, Burns testified that during his 35 years with the department, this was the first disciplinary action to his knowledge involving steroid use. He believed that termination was appropriate based on the positive urine test. Burns testified that the urine test results supported the department's findings that Orosco was using steroids, was under the influence of steroids, and had lied to investigators by denying his use of steroids. In light of the department's zero tolerance for illegal possession of drugs, he believed the department had no obligation to disprove a defense theory based on use of supplements. If Orosco had provided additional information on that theory, Burns would have considered it. Burns believed the department had satisfied its burden of proof.

Dr. Sample, a Quest executive, testified as an expert³ for the department regarding the laboratory test results. On direct examination, he was asked: "If someone was to inject dietary supplements that do contain anabolic steroids, such as Boldenone, Nandrolone or Drostanolone within the last 24 hours, would you expect to see Boldenone, Nandrolone or Drostanolone in the urine sample?" He replied that it was "certainly possible that the ingestion of supplements containing those products could

³ Dr. Sample's credentials as an expert witness regarding the laboratory test results were undisputed. He had over 32 years of experience in clinical laboratory medicine, toxicology, and therapeutic drug monitoring. He formerly served as assistant director of sports medicine drug identification at Indiana University School of Medicine, Department of Pathology. He was director of laboratory testing of athletes for performance enhancing substances during the 1996 Olympic Games in Atlanta and 1987 Pan-American Games in Indianapolis.

result in a positive urine test,” but this would depend on the amount taken and how much fluid was consumed.

On cross-examination, he explained that the test in question detects the presence of metabolites. These can result from ingestion of either a steroid (the parent compound) or a precursor. A precursor, unlike a steroid, is not a controlled substance. When asked whether this test can determine whether the subject of the test had ingested an illegal steroid rather than an over-the-counter supplement, Dr. Sample answered “No.” In Dr. Sample’s opinion, the laboratory report was “suggestive” that Orosco had consumed either steroids or precursors.

Dr. Sample testified that he was aware of the ingredients for only some of the supplements listed by Orosco, and that if those ingredients were ingested, they “could result in the presence of metabolites that we would report as positive as part of the laboratory test.” Dr. Sample explained that dietary supplements are known to contain precursors, which can be converted by the body into metabolites. For example, the supplement Tren Xtreme contained precursors for the “Nandrolone Metabolite,” which was detected in Orosco’s urine. The “Boldenone Metabolite,” also detected in his urine, most likely was caused by the ingestion of a precursor, because the parent compound is available only for veterinary use by injection.

As to Drostanolone, Dr. Sample explained that notwithstanding the phrase used in the laboratory report—“Drostanolone and/or Metabolite”—only the Drostanolone Metabolite was detected in the urine sample. When asked whether a supplement could cause a positive test result for Drostanolone Metabolites, Dr. Sample did not give a “yes” or “no” answer. He instead stated that he was “not aware of any reports,

documented or otherwise, where somebody has taken a supplement and then tested positive for Drostanolone or Drostanolone Metabolites.” This was his only response to the question.

Orosco testified that he was in charge of maximum security inmates at Men’s Central Jail in 2004 and 2005. In 2007, he became a supervisor of the 3,000 floor of Men’s Central Jail, which contains nine modules and houses 1,000 inmates. When he took the urine test, he was in reasonably good shape and exercised twice a day. The department encouraged deputies to work out because it is important to stay in shape for their job. Orosco stated that he maintained a strict diet and took dietary supplements that he purchased at local nutrition stores such as Max Muscles and GNC. The list of supplements that he provided to investigators was only a partial list. He had used supplements for years, sometimes taking several at the same time. When he took the urine test, he did not think supplements were illegal, because they were readily available at nutrition stores. Later, in 2009, the Food and Drug Administration issued a warning about dietary supplements. Based on that warning, he believes the supplements that he used are no longer being sold. He denied saying that he had taken steroids “back in the day,” but remembered Lieutenant Cruz had used that phrase when referring to other deputies who took steroids. He also denied making false statements to Internal Affairs officers, and specifically denied each allegation in the termination letter.

At the conclusion of the six-day hearing, Anthony issued a 56-page report in favor of reinstatement. He found the positive urine test for metabolites “could well have been the result of [Orosco’s] ingestion of the over the counter dietary supplements

he was taking.” Anthony concluded the department did not show that Orosco used steroids, was under the influence of steroids, or made false statements to investigators. He therefore recommended that Orosco be reinstated without a break in service.

Anthony’s report to the commission contained 13 findings of fact and 8 conclusions of law. After its May 2010 meeting, the commission issued a proposed decision accepting Anthony’s findings and recommendation for reinstatement. But after the department objected to reinstating Orosco, the commission reconsidered the matter. After reviewing the administrative record, the commission decided, by a vote of three to two, to sustain Orosco’s termination. It rejected Anthony’s recommendation for reinstatement, rejected several findings of fact (numbers 8, 9, and 13),⁴ and struck his conclusions of law.

Orosco filed a petition for writ of administrative mandate. (Code Civ. Proc., § 1094.5, subd. (c).)⁵ At the hearing on that

⁴ Two of the rejected findings of fact involved the department’s drug testing policy, which is not at issue on appeal. The third rejected finding—that the evidence established that the urine test could have been caused by the use of over the counter supplements—is at issue on appeal.

⁵ “Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in light of the whole record.”

petition, the trial court reviewed the administrative record under the independent judgment standard of review. The court posed numerous questions to the parties.

The first involved possible *Topanga* error. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 (*Topanga*) [administrative agency is required to bridge analytic gap between raw evidence and ultimate decision, by showing analytic route by which the agency reached its decision].) Given the discrepancy between the portions of Anthony's report which favored reinstatement, and the commission's ultimate decision sustaining termination, the court inquired whether there was a gap in the analytic route by which the commission had reached its decision. Counsel for the department stated this was "a troubling issue," and that "the commission may have to . . . be instructed to explain their analytical route."⁶

Another question posed by the court involved Dr. Sample's testimony that the laboratory report would "certainly be suggestive that the individual providing the specimen had used, ingested, somehow consumed those products or precursors that would then result in the results found by the laboratory." In light of Dr. Sample's use of the term "suggestive," the court inquired whether the department had satisfied its burden of proof as to Orosco's use of steroids. The department argued that it had done so, and that it had no obligation to disprove the defense theory that the positive test was caused by the use of supplements.

⁶ Ultimately, the court implicitly found that no *Topanga* error had occurred. The parties have not briefed the issue, which we do not address in this opinion.

Turning to the undisputed evidence that Drostanolone was available only for use by injection, the court inquired whether the department had examined Orosco for needle marks. The department indicated the record was silent on that point, but referred to Dr. Sample's testimony that he was unaware of any studies regarding supplements that could cause a positive urine test for Drostanolone Metabolite: "Q Do you know of any cases where Drostanolone is found in the urine sample that results from any over-the-counter supplement? [¶] A I am not aware of any reports of Drostanolone or Drostanolone Metabolites being present in the urine following the use of a so-called supplement."

Noting that Hernandez did not testify, the court inquired whether she had been called as a witness but failed to appear. The department explained that she was not called as a witness because her testimony would have been "irrelevant." The court commented that if Hernandez had seen Orosco injecting steroids, she could have provided direct testimony regarding steroid use. The department replied that it was using her extrajudicial statement solely to establish its reasonable cause for the urine test.

After receiving supplemental briefing, the court issued its statement of decision. It found the weight of the evidence did not support the commission's findings of steroid use, being under the influence of steroids, or making false statements.

With regard to steroid use, the court stated: "On cross-examination, Dr. Sample testified that he used the word 'suggestive' because 'the laboratory analysis can't tell you what somebody took.' . . . He also explained that a 'precursor' is a substance that is changed by the body into another substance that is 'the hormone of interest.' . . . Dr. Sample further testified

that someone could take a legal ‘precursor,’ such as the over-the-counter substance D.H.E.A., and test positive for the illegal steroids at issue in this lawsuit. . . . [¶] On direct examination, Dr. Sample testified that ‘it’s entirely possible . . . it’s certainly possible that the ingestion of [dietary] supplements containing [Boldenone, Drostanolone, or Nandrolone] could result in a positive urine test.’ . . . When asked on cross-examination whether he was aware of the fact that over-the-counter substances sometimes cause a positive test result, he answered ‘clearly, yes.’ . . . In connection with positive tests for the Boldenone and Nandrolone metabolites Dr. Sample testified that . . . a precursor, as opposed to the illegal steroid, could result in positive test results. . . . As for Drostanolone, Quest identified two metabolites, not the parent compound itself. Before testifying at the administrative hearing in 2009, Dr. Sample was given a list of some of the over-the-counter supplements that Petitioner advised the Department he had taken before he provided his urine sample. . . . Dr. Sample conceded that some of the over-the-counter supplements taken by Petitioner ‘could result in a positive finding.’ (AR 3148; see also AR 3151 “the substances that were identified that they might produce a positive in a test for anabolic agents”); AR 3153 (‘some of these substances, if they were ingested, could result in the presence of metabolites that we would report as positive as part of the laboratory test.’). Dr. Sample testified that Quest’s drug tests cannot determine if the positive test results are from ingesting an illegal steroid or from an over-the-counter supplement. (AR 3155). For example, the active compound in the over-the-counter supplement Tren Xtreme would metabolize into one of the substances found in this case, Nandrolone Metabolite. (AR 3160-

3162). Regarding Boldenone, Dr. Sample also testified that someone would test positive for the metabolite found in this compound if they took some substance other than Boldenone itself. (AR 3170). In connection with Drostanolone, Quest did not test for the actual compound, just the metabolites. (AR 3210).”

The court also stated: “Based on Dr. Sample’s training and experience, the facts relied on by him, and the reasons for his opinion in interpreting the Quest test results, the Court does not accept the inference or adopt the conclusion that Petitioner took the anabolic steroids Boldenone, Drostanolone, or Nandrolone in violation of the Department’s policies. Put another way, Dr. Sample’s use of the word ‘suggestive’ to link Quest’s test results with Petitioner’s use of the three enumerated steroids does not constitute substantial evidence of Petitioner’s illegal drug use. The Court is also troubled that although Dr. Sample advised the Department that some of the over-the-counter supplements taken by Petitioner could result in a positive drug test, the urine sample was never tested for any of the over-the-counter supplements. . . . This failure, along with the absence of a masking agent in the tested sample, the failure of the Department to provide Petitioner with a split sample, and the failure of the Department to call an obvious witness—Hernandez—at the hearing, leave the Court with the distinct impression that the Department was not interested in accuracy or the truth. The Department simply wanted Petitioner—a difficult employee at best—terminated.”

As to being under the influence of steroids, the court stated: “Indeed, the evidence is to the contrary. For example, Cruz testified that Petitioner never used unreasonable force while he was assigned to Men’s Central Jail. . . . Cruz also testified that

Petitioner was known for using restraint with inmates. . . . The following colloquy is instructive:

Question: On the date that . . . the drug test was ordered, did you observe any symptoms at that time that Deputy Orosco was under the influence of a steroid?

Answer: No.

In addition, Petitioner's restraint on September 21, 2007 while he was being physically attacked by Hernandez is not the type of behavior that is consistent with someone who was under the influence of steroids and prone to "[ste]roid' rage."

The court found the dishonesty allegations were not supported by the weight of the evidence. In light of its ruling that steroid use had not been proven, Orosco's statements denying the use of steroids could not form the basis for the dishonesty charges.

As to the "back in the day" statement, the court found "[t]his contention is also not supported by the weight of the evidence. First, Petitioner's alleged statement to this effect was not tape-recorded even though the Department had a tape recorder available on October 26, 2007, when he allegedly made this statement. In fact, the Department taped the portion of Petitioner's statement involving his understanding of the drug testing admonition form. . . . In addition, Respondents did not present any evidence that it memorialized Petitioner's alleged statement on or about October 26, 2007. Second, given Petitioner's age during the interview—approximately 26 years old—it is simply not believable that he would have used an archaic term such as 'back in the day.' Third, with the exception of Denison and Cruz, all of the witnesses who allegedly heard Petitioner make this statement backtracked or equivocated when

pressed. (See, e.g., 12 AR 2829 (Whitman testified that he ‘wasn’t paying a lot of attention to’ Petitioner’s statement); AR 2815 (Harris testified that ‘I don’t recall him specifically saying, “Back in the day, I took steroids.”’); AR 2704 (Cruz testified that “I believe that’s when Deputy Orosco said ‘I used steroids back in the day.’”). As for Denison, based on the fact that he changed his testimony regarding whether or not he followed the proper procedures before collecting Petitioner’s urine sample, the Court does not accept his testimony on this issue. (AR 2860-2861, 2822). Based on the Court’s review of the record, it is likely that Cruz, not Petitioner, said that his former partners used steroids ‘back in the day.’ (AR 3625).”

The court entered a judgment granting the petition for peremptory writ of administrative mandate, and remanding the matter to the commission with orders to set aside its decision, reconsider the matter in light of the court’s statement of decision, and take such further action as is specially enjoined upon it by law. (Code Civ. Proc., § 1094.5, subd. (f).) This timely appeal followed.

DISCUSSION

In a case affecting an employee’s fundamental vested right, such as the right to continued employment, the trial court exercises its independent review on the evidence. (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 143.) It makes its own credibility determinations and draws its own inferences, but affords a strong presumption of correctness to the administrative decision. (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 811–812.)

In an appeal from a judgment where the trial court exercised its independent judgment, the appellate court must

consider the evidence in the light most favorable to the judgment, drawing every reasonable inference in favor of the court's findings, and resolving all conflicts in its favor. (*Breslin v. City and County of San Francisco* (2007) 146 Cal.App.4th 1064, 1077–1078.) Testimony that is found credible by the trial court cannot be rejected unless it is either physically impossible or demonstrably false without resorting to inferences or deductions. (*Beck Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1204.)

I

The department challenges the sufficiency of the evidence to support the trial court's rejection of the steroid use allegations. It claims the overriding issue is whether it is entitled to discharge a deputy who tested positive for illegal steroids. But the department overstates the test results. According to its own expert, Dr. Sample, a laboratory tests a subject's urine sample for metabolites, and a positive result, by itself, does not establish whether the subject was using illegal steroids or over-the-counter supplements, either of which can produce a positive result.

The evidence, viewed in the light most favorable to the judgment, showed that the positive test results for steroid metabolites did not eliminate the use of an over-the-counter supplement as the causal agent. Consistent with Dr. Sample's testimony that the test results were "suggestive" that Orosco had consumed either steroids or precursors, the trial court found that the test results were insufficient to prove the charge of illegal steroid use.

On appeal, the department argues the trial court ignored Dr. Sample's testimony that if someone "were to ingest dietary

supplements, he would not expect to see anabolic steroids such as Boldenone, Nandrolone, Drostanolone, Testosterone, or an elevated Testosterone Epitestosterone ratio, or T/E ratio in the urine sample.” But this misstates his testimony. When asked whether a positive urine test for metabolites could result from the use of a dietary supplement that was free of steroids and precursors, Dr. Sample answered, “No.”⁷ Given his testimony that laboratory tests do not show whether the subject had ingested steroids or precursors, the cited portion of his testimony does not undermine the trial court’s findings; rather, his testimony as a whole shows it is possible for a person to consume a supplement that contains precursors, which are not illegal, and test positive for metabolites without having taken any steroids.

The contention that “Orosco never disputed the positive test result, which was an established fact,” is unavailing. Orosco consistently denied all use of steroids and asserted a causal link between supplements and the positive test results for metabolites. The evidence relied upon by the department—Dr. Sample’s testimony that he was not aware of any reports regarding the use of supplements and a positive test for Drostanolone or Drostanolone Metabolites—was not dispositive. The evidence did not foreclose a finding that the positive results were caused by supplements.

⁷ The question posed to him was: “If someone were to ingest dietary supplements *that do not contain anabolic steroids, such as Boldenone, Nandrolone, Drostanolone, or Testosterone, or Testosterone Precursors*, would you expect to see Boldenone, Nandrolone, Drostanolone or an elevated T/E ratio in the urine sample as a consequence of those over-the-counter supplements?” (Italics added.)

The trial court had the responsibility to determine the weight to be given to Dr. Sample's testimony. His testimony showed that in general, the test results were "suggestive" of the use of steroids or precursors, and left open the question whether the presence of Drostanolone Metabolites was due to the use of supplements or steroids. In considering which was the more likely explanation, the trial court was entitled to consider the entire record.

The argument that the judgment "was wholly based upon a speculative and selective reading of the evidence, combined with a failure to give any deference to the administrative body" is refuted by the court's detailed statement of decision. Rather than misallocate the burden of proof, as the department contends, the court found there was a failure of proof. In addition to the lack of any direct evidence of steroid use, it found there was no corroborating evidence of needle marks, use of a syringe, steroidal rage, or the like. The court's acknowledgement of the lack of corroborating evidence was not improper. (Cf. Evid. Code, § 412 [trier of fact may view with distrust the weaker evidence presented by a party who has ability to produce stronger and more satisfactory evidence].)

We do not agree with the department's position that the trial court necessarily lumped all of the supplements together. In support of this contention, the department relies on the fact that Dr. Sample was unaware of any study that links the use of supplements with a positive result for Drostanolone or Drostanolone Metabolites. But the mere fact that Dr. Sample was unaware of such a study does not require a finding of illegal steroid use.

The department's criticism of the trial court's written ruling is unwarranted. The record reflects that substantial time and effort were spent in reviewing the voluminous record and crafting a detailed statement of decision, providing a careful and thoughtful analysis. The same is true of the hearing officer and commission members, who also reviewed the record. We have found no lack of attention or effort at any phase in the proceedings.

The allegation that the trial court overstepped its role by inquiring about the lack of testimony by Hernandez is not supported by the record. The record indicates the court was interested in whether she had disobeyed a subpoena, which is a relevant inquiry. Because a trial court is authorized to grant a new administrative hearing if a relevant but uncooperative witness fails to appear in violation of a subpoena, its inquiry was appropriate. (See Code Civ. Proc., § 1094.5, subd. (e).)

If the trial court's findings are supported by substantial evidence, they must be affirmed, and deference must be given to its credibility determinations and reasonably drawn inferences. (See *West Chandler Boulevard Neighborhood Assn. v. City of Los Angeles* (2011) 198 Cal.App.4th 1506, 1517–1518.) We conclude there is substantial evidence to support the trial court's finding that the allegations of steroid use were not proven. (*Fukuda v. City of Angels, supra*, 20 Cal.4th at pp. 811–812.)

Finally, we turn to the department's contention raised at oral argument regarding burden-shifting. Even if we assume that some type of burden-shifting could apply in a writ of administrative mandate proceeding, the ultimate burden of persuasion on the issue of steroid use remained with the department, and it was the department's failure to prove that the

positive results were caused by steroids rather than supplements that was fatal to its case.

II

The department also challenges the sufficiency of the evidence to support the rejection of the dishonesty allegations. We conclude the trial court's ruling is supported by substantial evidence.

The evidence, viewed in the light most favorable to the judgment, supports the trial court's factual finding that Orosco did not lie or mislead the department's internal affairs investigators. At the administrative hearing, Orosco specifically denied each allegation of dishonesty, including the "back in the day" statement attributed to him by several witnesses. The court explained why each of the department's witnesses was not credible on that point, and we defer to its ruling on matters of credibility. Because the trial court was entitled to believe Orosco's testimony, which was not inherently incredible, we affirm the ruling.

III

The department argues that deference was not given to its selection of the appropriate penalty, termination. In light of our determination that the record contains substantial evidence to support the trial court's rejection of the disciplinary charges, imposition of the appropriate penalty is a moot point.

DISPOSITION

The judgment granting the petition for writ of administrative mandate is affirmed. Orosco is entitled to recover his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EPSTEIN, P. J.

We concur:

MANELLA, J.

COLLINS, J.